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No. 79-1643

In the Supreme Court of the United States

OCTOBER TERM, 1979

MARGARET E. BOSCO, PETITIONER

v.

ECKARDT C. BECK, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The court of appeals affirmed the decision of the district court without opinion (Pet. App. 34). The opinion of the district court (Pet. App. 37-72) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 34) was entered on January 18, 1980. A petition for a writ of certiorari was filed on April 15, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Environmental Protection Agency properly concluded that an environmental impact statement was not required in connection with federal funding of a sewerage collection and treatment project.

STATUTE INVOLVED

Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), is reproduced in the opinion of the district court (Pet. App. 44-45).

STATEMENT

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, established a program under which EPA may make grants to a state, municipality, interstate agency or inter-municipal agency for the construction of publicly-owned wastewater treatment works. 33 U.S.C. 1281(g). Under this program, EPA is funding 75% of the construction costs of such a project for Belvidere, New Jersey. See 33 U.S.C. 1282; see also 40 C.F.R. 35.900 *et seq.* (1978). EPA determined that since the project did not have a significant effect on the environment, no EIS was required.[1] On September 8, 1978, EPA issued "negative declarations" and an Environmental Impact Appraisal (EIA) in support of this decision, as required by its regulations (A.R. 32, 33)[2]. The EIA addressed the environmental aspects of the project as required by 40 C.F.R. 6.212(b)(2)(i). Following issuance of the negative declarations and EIA, public comments were solicited. No significant environmental issues were raised during the comment period. EPA awarded the construction grants on September 29, 1978. Construction of the project began on October 15, 1979, and continues at this time.

On June 13, 1979, petitioner sued the federal and state respondents, alleging essentially that an EIS was required in connection with the sewerage collection and treatment

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[1]See 40 C.F.R. Part 6, Subpart E (1978) for EPA regulations implementing NEPA in connection with wastewater treatment works construction grants. New regulations appear at 44 Fed. Reg. 64174 (1979).

[2]"A.R." refers to the administrative record.

project and seeking to enjoin the construction of the project until an EIS was filed under 42 U.S.C. 4332(2)(C). Following trial, the district court denied injunctive relief and dismissed the complaint on August 30, 1979 (Pet. App. 35-36). The district court held that EPA's decision not to prepare an EIS was justified because there were no significant environmental impacts associated with the sewerage project. The court of appeals affirmed without opinion (Pet. App. 34).

ARGUMENT

The decision below is correct, does not conflict with the decision of any other circuit, and does not raise any important questions warranting this Court's review.

The district court, in a considered opinion (Pet. App. 37-72), correctly held that EPA had assessed the environmental impacts of the proposed sewerage project, and had justifiably concluded that the consequences were too insignificant to require an EIS. The EIA assessed the effects of the project on air quality, noise levels, natural resources, social and economic factors, water quality, and other aspects of the environment (A.R. 32, 33 at 1-6).[3] Alternatives to the proposed project, with evaluations of each, were also presented (A.R. 33 at 6-9). Steps to minimize harm to the environment during construction were described, including the incorporation into the construction specifications of state Department of Environmental Protection guidelines (*id.* at 9-10). The

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[3]Contrary to petitioner's assertions (Pet. 22), the EIA dealt with the subject of odors at the plant site and reasonably concluded that this was not a significant environmental impact (A.R. 32, 33 at 8). The assessment noted homes are located within 600 feet of the site (A.R. 33 at 8). Odors are to be minimized by careful operation and maintenance practices, the use of chlorine, and screening vegetation to reduce wind velocity (*id.* at 3, 5).

EIA noted that records of a public hearing showed no unanswered questions concerning the project (*id.* at 11). Based on the foregoing, EPA concluded there would be no significant impacts such as would require an EIS (*ibid.*). Petitioner does not point to one significant environmental impact of this project.

Petitioner primarily argues (Pet. 13-19) that the district court incorrectly applied the "arbitrary-and-capricious" standard of review to EPA's decision not to prepare an EIS, rather than the "reasonableness" standard, which petitioner prefers. This issue is illusory because the district court specifically found both standards were met (Pet. App. 67 n.3 (the word "reasonable" in petitioner's reproduction of this footnote should read reasonableness")).

Petitioner simply challenges the wisdom of the project. NEPA, however, does not authorize the courts to substitute their judgment as to the desirability of a particular project. *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, No. 79-168 (Jan. 7, 1980), slip op. 5; *Jicarilla Apache Tribe of Indians* v. *Morton*, 471 F. 2d 1275, 1279-1280 (9th Cir. 1973); *Committee for Nuclear Responsibility, Inc.* v. *Seaborg*, 463 F. 2d 783, 786-787 (D.C. Cir. 1971).[4]

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[4]Petitioner also makes several unclear allegations of conflict of interest, political pressure and the like in connection with the decision to construct the sewerage project (Pet. 23-31). These allegations are irrelevant to petitioner's NEPA claim, and petitioner has failed to provide any factual support for them.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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